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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,599	09/15/2003	Bruce L. Kennedy	02580-P0085B	2356
24126	7590	10/13/2005		
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			EXAMINER SMITH, PHILIP ROBERT	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/662,599

Applicant(s)

KENNEDY, BRUCE L.

Examiner

Philip R. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 32-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-31, 46 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Claim Rejections - 35 USC § 112**

- [01] Previous rejections under 35 U.S.C. §112 are withdrawn in view of the amendments to the specification of 9/9/2005.

**Claim Rejections - 35 USC § 102**

- [02] Claims 19-27, 29-31 & 46-47 are rejected under 35 U.S.C. §102(a) as being anticipated by Winkler (6411851), substantially for the reasons set forth in the Office action of 6/9/2005.
- [03] With regard to claim 19: The "portable programming apparatus for use with an IMD" disclosed by Winkler is a medical video instrument. As stated by Winkler in 12/24-27: "Display screen 206 is operatively coupled to computer circuitry disposed within housing 202 and is adapted to provide a visual display of graphics and/or numerical and alphanumeric data under control of the computer circuitry."
- [04] As previously noted in the Office action of 6/9/2005, the touch screen disclosed by Winkler is for entering control commands to control the portable programming apparatus for use with an IMD, i.e. a medical video instrument.
- [05] With regard to claims 20-21: The touch screen disclosed by Winkler is inherently unpluggable from the housing disclosed by Winkler. Both inherently include mating plug portions. These mating plug portions may be 'stackable'.
- [06] With regard to claim 46: As noted above, Winkler discloses in 12/24-27 that the medical video instrument generates video data ("a visual display of graphics

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and/or numerical and alphanumeric data under control of the computer circuitry") that is displayed on said touch screen.

[07] With regard to claim 47: The touch screen ("display screen 206,"), which composes the medical video instrument disclosed by Winkler, further comprises a video screen which is coupled to the processor. As noted above, the medical video instrument generates video data which is displayed on the touch screen, which necessarily requires a video screen for said display. It is noted that Applicant's specification discloses certain embodiments where video data at a screen which is remote and separate from the touch screen from which control commands are entered, but in communication with the same processor. The scope of the claim however, does not necessitate such an interpretation. It is noted that touch screens conventionally comprise a video screen which assists in the entering of commands, displaying video data which directs the operator to effect control commands.

#### **Claim Rejections - 35 USC § 103**

[08] Claim 28 is rejected under 35 U.S.C. §103(a) as being unpatentable over Winkler in view of Adair, and in further view of Bodicker et al (2002/0193676) for the reasons set forth in the Office action of 6/9/2005.

#### **Response to Arguments**

[09] Applicant's arguments filed 9/9/2005 have been fully considered but they are not persuasive.

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- [10] Applicant contends that the medical instrument disclosed by Winkler is not a medical video instrument as required by claim 19. On the contrary, the medical instrument disclosed by Winkler is a medical video instrument by virtue of the fact that it has a display screen, as noted in the Office action of 6/9/2005.
- [11] Applicant further contends that claim 19 is not obvious in view of the '851 patent, an argument which is moot considering that Winkler is used as an anticipatory reference.
- [12] Applicant further contends that "the '851 patent fails to teach, disclose or suggest that the medical video instrument generates video data that is displayed on the touch screen, as required by claim 46; or a video screen coupled to the processor, where the medical video instrument generates video data that is displayed on the video screen, as required by claim 47." For the reasons stated above, it is maintained that Winkler anticipates claims 46-47.

### Conclusion

- [13] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
- [14] A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

- [15] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R. Smith whose telephone number is (571) 272 6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.
- [16] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.
- [17] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

[18] prs



John P. Leubecker  
Primary Examiner